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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,965	06/21/2001	Russell L. Kress	Kress 400	5029

7590 08/10/2005  
Mr. Edward J. Timmer  
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EXAMINER	
HORTON, YVONNE MICHELE	
ART UNIT	PAPER NUMBER
3635	

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/886,965

Applicant(s)

Kress, Russell L

Examiner

Yvonne M. Horton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-9,11,13-15,17-20,24,25 and 28-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3-9,24,25,28-35,51 and 53-57 is/are allowed.
- 6) ☒ Claim(s) 11,13-15,18,20,35-49 and 52 is/are rejected.
- 7) ☒ Claim(s) 17,19,50 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

The amendment filed 5/20/05 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the electrical actuator being connected to the building electrical services.

Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 52 stands rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #5,111,626 to FORTUNE. FORTUNE discloses the use of an enclosure (10,30) including a plurality of plastic sections, column 3, lines 63-65, lower walls defining a floor (26), four walls (W), see the marked attachment, upper walls defining a top (CE), and a door opening (20), an integral bed (32,52) and a desk (42).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 11,14,15,41 and 42 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #2,486,371 to MANKKI in view of US Patent #5,398,465 to TAGG. MANKKI discloses a modular living enclosure (10) including a plurality of sections such that the sections define a floor (16), a top wall – being the ceiling of the building (column 1, line 54 to column 2, line 1), four side walls (17-20), and a door opening (48); wherein , the enclosure includes an integral bathroom feature in the form of a toilet (14) and a surface (22a). MANKKI discloses the basic claimed enclosure except for being formed from plastic and except for explicitly detailing that his surface (22a) can be a bed. TAGG teaches that it is known in the art to form an enclosure (10) out of plastic, column 4, line 61 and column 5, lines 49-55. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the enclosure of MANKKI out of the plastic material of TAGG in order to eliminate possible corrosion, cut down on material costs and weight of the enclosure itself. In reference to the surface (22a) of MANKKI being a bed, although MANKKI is silent in this regard and actually details this surface as a seat, it would have been obvious to one having ordinary skill in the art at the time the invention was made that there is nothing precluding the surface (22a) of MANKKI from being a bed. In reference to claim 14, the bathroom feature also includes a washbasin (29).

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Regarding claim 41, MANKKI discloses assembling the enclosure (10) within a building, column 1, lines 39-43. In reference to claim 15, TAGG also teaches the use of a conduit (122-124) that communicates with a sump chamber (103,111). Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the enclosure of MANKKI with the conduit and sump chamber of TAGG in order to properly and sanitarily dispose of waste. Regarding claim 42, although MANKKI is silent with regards to the enclosure being connected to water, sewer and electrical services, it would have been obvious to one having ordinary skill in the art at the time the invention was made that since there are water, sewer and electrical utilities provided by MANKKI, that these facilities be hook up and cooperate with the services required for proper operation thereof.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #2,486,371 to MANKKI, as modified by US Patent #5,398,465 to TAGG, as applied to claim 11 above, and further in view of US Patent #3,533,200 to ZOEBELEIN. MANKKI, as modified by TAGG discloses the basic claimed enclosure except for explicitly detailing the use of a garbage disposal system. ZOEBELEIN teaches that it is known in the art to provide an enclosure (10) with a garbage disposal (40,41,45) that communicates with a toilet (15). ZOEBELEIN, Although silent with regards to whether his garbage disposal is electrical, it is very well known in the art that devices used to rid the toilet system from waste/garbage are commonly known as being operated electrically. Hence, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the toilet of MANKKI, as modified by TAGG, with the garbage disposal system of ZOEBELEIN in order to properly dispose of any and all waste material that enters the system thereby decreasing health risks.

Claim 18 stands rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #3,533,200 to ZOEBELEIN in view of US Patent #5,398,352 to KORDELIN and US Patent #5,398,465 to TAGG. ZOEBELEIN discloses the use of an enclosure (10) including a plurality of plastic, column 4, line 32-37, sections consisting of a top (25), a floor (14), four side walls (10-12), a door opening (31), a toilet (15), a washbasin (17). ZOEBELEIN discloses the basic claimed enclosure except for explicitly detailing that the toilet communicates to an electrical garbage disposal and except for explicitly detailing the use of a floor drain and sump chamber and pump. ZOEBELEIN, Although silent with regards to whether his garbage disposal is electrical, it is very well known in the art that devices used to rid the toilet system from waste/garbage are commonly known as being operated electrically. KORDELIN teaches the use of a floor drain, column 2, lines 13-15, and TAGG teaches the use of a sump chamber (103) and pump (118,120). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system of ZOEBELEIN with the floor drain of KORDELIN and the sump pump and chamber of TAGG in order to proper drain and dispose of waste therein.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,111,626 to FORTUNE. FORTUNE discloses the use of an enclosure (10,30) including a plurality of plastic sections, column 3, lines 63-65, defining a floor (26), four walls (W), see the marked attachment, a top (CE), and a door opening (20), an integral bed (32,52) and a desk (42). Although the desk of FORTUNE is hingedly attached, the applicant is reminded that it would have been obvious to one having ordinary skill in the art at the time the invention was made to form that which is previously made in several pieces as one piece since this skill involves routine

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skill in the art. Further, integral does not imply "one-piece". Once the desk is attached it is integrally secured to the unit.

Claims 35-42 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #3,533,200 to ZOEBELEIN in view of US Patent #5,111,626 to FORTUNE. ZOEBELEIN discloses the use of an enclosure (10) including a plurality of plastic, column 4, line 32-37, sections consisting of a top (25), a floor (14), four side walls (10-12), a door opening (31), at least one bathroom feature (15,16,17,19) connected to building water services (column 5, lines 37-48). ZOEBELEIN discloses the basic claimed enclosure except for the use of an electrical actuator programmable computer control unit. FORTUNE teaches that it is known in the art to provide a modular enclosure (10) with an electrical actuator (114) and programmable control unit (11,119) to control the water flow. FORTUNE is silent as to whether his actuator is connected to the building's electrical services; however, It would have been obvious to one having ordinary skill in the art at the time the invention was made that since the actuator is electrical that the electrical system within the building would provide the source of electricity to the actuator. It too would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the enclosure of ZOEBELEIN with the actuator and control unit of FORTUNE in order to maintain efficient and consistent water flow throughout the unit. Regarding claims 36-40, FORTUNE also teaches the use of lighting (122), ventilation fan (61), sprinkler (126), water heater (96), sump pump (103,104) and chamber (83,84). In reference to claims 41 and 42, ZOEBELEIN discloses that his unit is disposed within a building, column 5, lines 37-48, and is connected to building services.

Claims 43-49 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #3,533,200 to ZOEBELEIN in view of US Patent #5,111,626 to FORTUNE. ZOEBELEIN discloses the use of an enclosure (10) including a plurality of plastic, column 4, line 32-37, sections consisting of a top (25), a floor (14), four side walls (10-12), a door opening (31), a bathroom feature (15,16,17,19) connected to discharge conduits (40,41,45), and building services column 5, lines 37-48. ZOEBELEIN discloses the basic claimed enclosure except for the use of a waste communiton device. ZOEBELEIN, Although silent with regards t whether his garbage disposal is electrical, it is very well known in the art that devices used to rid the toilet system from waste/garbage are commonly known as being operated electrically. FORTUNE teaches that it is known in the art to provide a modular enclosure (10) with a communiton device (104,113). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the enclosure of ZOEBELEIN with the communiton device of FORTUNE in order to maintain properly and effectively dispose of waste within the unit. In reference to claim 44, the water supply (40,41,45) of ZOEBELEIN is connected to toilet (15). Regarding claims 45 and 47, FORTNE also teaches the use of a garbage disposal system (113) and discharge units 940,41,45). In reference to claims 46 and 48, the enclosure of ZOEBELEIN includes a washbasin (17) and drain conduit (40,41,45), column 9, lines 59-62. Regarding claim 49, FORTUNE also teaches the use of a ventilation fan (61).

***Allowable Subject Matter***

Claims 17,19 and 50 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.



Claims 1-9, 24-25, 28-34 and 53-56 stand as being allowable.

Claims 51 and 57 are allowed.

***Response to Arguments***

Applicant's arguments filed 5/20/05 have been fully considered but they are not persuasive.

In reference to applicant's arguments regarding FORTUNE and there bein no teaching of an integral bed or desk, the settee (32,54) of FORTUNE is fully capable of being a "bed". It is long and is able to accommodate lengthwise a body. Although FORTUNE does not explicitly use his settee as a bed, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art.

In reference t the applicant's argument that the settee/bed and desk of FIORTUNE are not integral, the applicant is reminded that it is within the general skill of a worker to form a device that is previously formed from several pieces out of a single element. Further, once the members are mechanically attached or secured the final product is integral.

Regarding the applicant's argument that the device of MANKKI does not include a top wall, column 1, line 54 to column 2, line 1 details that the top wall of the unit is in fact the ceiling of the building. Thus, a top was is disclosed.

In response to applicant's argument that neither MANKKI nor TAGG discloses units for housing persons, a recitation of the intended use of the claimed invention must result in a

structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. Further, clearly person are accommodated and are therefore “housed”.

Regarding the applicant’s argument that the disposal device of MANKKI is not electrical, ZOEBELEIN, Although silent with regards t whether his garbage disposal is electrical, it is very well known in the art that devices used to rid the toilet system from waste/garbage are commonly known as being operated electrically.

In reference to the applicant’s argument that ZOEBELEIN does not disclose a drain and the examiner agrees. It is KORDELIN that teaches the flow drain (not shown) that is covered by a grating (17), column 2, lines 13-15, and ZOEBELEIN is heretofore modified by KORDELIN. No where does the examiner discuss element (19) as being the flow drain.

Regarding the applicant’s argument that FORTUNE does not disclose a programmable electrical device, clearly FORTUNE details a central logic unit (119) that is commonly known in the art as the “programmable” unit responsible for controlling operations thereof.

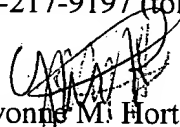
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (703) 308-1909. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703) 308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

YMH

  
Yvonne M. Horton  
Art Unit 3635  
8/8/05